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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 97-231
BellSouth Long Distance, Inc., for	)	
Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

REPLY COMMENTS OF
THE BELL ATLANTIC TELEPHONE COMPANIES

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REPLY COMMENTS OF THE BELL ATLANTIC TELEPHONE COMPANIES[1]

While Bell Atlantic is not in a position to address the specific facts relied upon by BellSouth in its application for in-region, interLATA service in Louisiana, the comments on BellSouth's application raise a number of legal and policy issues that are likely to arise in other section 271 applications, regardless of the Bell company involved or the state at issue. These reply comments briefly address several of these issues.

1. PCS providers can qualify as "competing providers of telephone exchange service." The Commission has found that PCS providers provide "telephone exchange service."[2] Nevertheless, several commenters attack BellSouth's reliance on PCS

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[1] The Bell Atlantic telephone companies are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15449, ¶¶ 1012-14 (1996) ("Local Competition Order"). Although the Commission's determination focused on Part (B) of the Act's definition of "telephone exchange service," 47 U.S.C. §153(47)(B), the Commission clearly left open the possibility that

providers to demonstrate compliance with "Track A" by arguing that, as a factual matter, PCS providers do not "compete" with incumbent wireline carriers, either in Louisiana or anywhere else, because they are not currently a substitute for traditional wireline service. It would be unreasonable for the Commission to adopt such a categorical rule on the limited facts of a single application. Even MCI and Sprint concede that PCS may provide an alternative to traditional telephone service in the future. MCI Comments at 8-9; Sprint Petition at 19-20. Making that determination requires a case-by-case assessment. See DOJ Louisiana Evaluation at 7-9. Therefore, even if the Commission were to find that PCS providers are not "competing" providers in Louisiana at this time, it would be arbitrary and capricious to preclude demonstrations in future applications that PCS providers do, in fact, provide competing telephone exchange service.[3]

2. The Act's non-discrimination standard prohibits only competitively significant differences. The competitive checklist in section 271 of the Act requires the Bell companies to provide "non-discriminatory access" to, among other things, network elements, databases and associated signaling. A number of the commenters here appear to interpret this to impose a requirement of absolute equality. This is not the right standard.

PCS also meets the definition of Part (A): "At a minimum, we find that . . . PCS . . . providers fall within the second part of the definition." Id. at ¶ 1013 (emphasis added).

[3] The arguments of MCI, WorldCom and others that PCS providers do not need all elements of the checklist and therefore cannot meet the purpose behind Track A do not require a different result. An applicant might, for example, show that one carrier whose interconnection agreement includes all fourteen checklist items is providing competing service to one segment of the market, while a PCS provider is providing competing service to another segment. See Ameritech Michigan Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ¶ 82.

As a practical matter, there necessarily will be some differences between the access a Bell company provides to other carriers and the access it provides to itself. To pick just one example, whenever a Bell company provides other carriers with a separate electronic gateway to obtain access to databases or support systems, there necessarily will be some difference between the way the Bell company interacts with those systems, and the way a competitor does.

The mere fact that there may be some technical differences in the way a competitor obtains access should not be the issue, however. Instead, the real question should be whether any differences that do exist are competitively significant.

This is the standard that Judge Green applied under the AT&T consent decree. For example, Judge Green held that access was "equal" when "overall quality in a particular area is equal within a reasonable range which is applicable to all carriers," and he declined to "insist on absolute technical equality" which would have meant identical values for loss, noise, probability of blocking, and the like. United States v. Western Elec. Co., 569 F.Supp. 1057, 1063 (D.D.C. 1983). Unduly rigid demands for technical equality, he concluded, "would necessitate substantial dismantling and reconstruction of local telephone networks without any real benefits either to the consuming public or to AT&T's intercity competitors." Id. Access was equal if AT&T's competitors "would not be disadvantaged" competitively. 569 F. Supp at 1064. The same reasoning applies here.

The Department of Justice appears to recognize this fact. For example, the Department's evaluation of BellSouth's South Carolina application acknowledges that the access provided to operations support systems may not be "identical or precisely comparable to the functionality available for the applicant's own use." DOJ S.C. Evaluation at 27-28. But the Commission should not "require 'perfection' in OSS offerings as a condition of section 271 approval." Id. at 28. Instead, according to the Department, in those instances where differences do exist, the relevant inquiry is whether those differences will "materially impact competition." Id.[4]

3. The competitive checklist cannot be expanded to require fully automated access to operations support systems. Despite an express statutory prohibition against expanding the terms of the competitive checklist, § 271(d)(4), some of the commenters here urge the Commission to add a new term to the checklist, and to require that the Bell companies provide, at least in some circumstances, fully automated access to their operations support systems.[5] Neither the statute nor the Commission's rules impose such a requirement, however, nor should one now be imposed.

On the contrary, while the Commission has concluded that incumbent carriers must provide non-discriminatory access to their existing operations support systems, it also has made it clear that they may do so in any way that allows competitors to provide

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[4] The Department made the same point in the Ameritech proceeding, where it identified a problem Ameritech was experiencing with trunk blocking. It did not conclude that any difference in the level of blocking was dispositive by itself, however. Instead, according to the Department, "the relevant question is whether the difference between the competitors' experience and Ameritech's own retail blocking is sufficiently significant as to deviate from Section 251(c)(2)'s mandate that CLECs be afforded interconnection on 'nondiscriminatory' terms." DOJ Michigan Evaluation at 25-26 (emphasis added).

[5] In this context, fully automated access means that, in addition to the capability to receive orders from competitors over an electronic interface, once the orders are received they flow mechanically through the ordering process into the service order processors without the need for manual handling.

service in "substantially the same time and manner" that the incumbent provides service to its own customers. Local Competition Order, ¶ 518. So long as a Bell company can demonstrate that it has systems and processes in place that are capable of meeting this standard -- and that they are capable of doing so at the volumes it reasonably expects to receive -- there simply is no rational reason to deny it long distance relief solely because its internal systems for processing orders (once they have been received from a competitor) may, in some instances, require a degree of manual intervention.

Nor, contrary to the claims of the long distance incumbents, would it be reasonable to adopt such a categorical rule on the limited facts of a single application. This is especially true given that future applications are likely to present different facts, and different levels of proof. For example, when Bell Atlantic files its applications, they will be supported by concrete proof of our capability to handle actual commercial volumes notwithstanding the fact that some types of orders may have to be processed with some manual intervention.[6] What's more, there is nothing new about manual intervention in the processing of orders which makes it inherently suspect. The telephone industry has long handled large volumes of orders manually, as have other industries, such as the securities and shipping industries, as well as the mail order catalog business. There simply is no reason to foreclose companies from demonstrating that some degree of manual intervention in order processing can work here too.

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[6] In New York, for example, Bell Atlantic recently demonstrated that its systems not only are capable of handling the volume of orders being received today, but also already are capable of handling more than the volume of orders that it expects to receive throughout 1998. See Supplemental Petition of Bell Atlantic-New York, Petition of New York Tel. Co. For Approval of Its Statement of Generally Available Terms and

4. Carriers that wish to combine unbundled elements should obtain access to those elements in the manner prescribed by the Act. In the wake of the court decision that the Act does not permit competitors to purchase an assembled platform of combined network elements (and must instead combine those elements themselves), the long distance incumbents urge the Commission to adopt a rule here that providing access to individual elements through collocation arrangements so that competitors can combine the elements is inadequate. Again, however, even apart from the fact that this is not a rulemaking proceeding to adopt rules of general applicability, the Commission simply cannot adopt such a categorical rule on the record of this proceeding.

First, the long distance carriers claim that, unless local exchange carriers do the rebundling that the court said the Act doesn't require, they must allow competing carriers into their central offices with screwdrivers in hand so the competitors can, for example, directly connect an unbundled loop to a port on a switch. Not so. Section 251(c)(3) of the Act only requires that local exchange carriers provide "access" to network elements on an unbundled basis, and do so "in a manner that allows requesting carriers to combine such elements" themselves. Providing access through a collocation arrangement does precisely this, and does it in the way contemplated by the Act itself. In fact, the collocation provision of the Act expressly requires local exchange carriers to provide for collocation specifically to allow competing carriers to obtain "access to unbundled network elements at the premises of the local exchange carrier." Section 251(c)(6) (emphasis added).

Conditions, and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271, Case 97-C-0271 at 34-38 (filed with NY PSC) (Nov. 6, 1997).

Second, the underlying factual premise for the argument is flawed. The long distance carriers baldly assert that a collocation arrangement will always be more costly for competitors than other arrangements that are nowhere contemplated by the Act, such as providing supervised access to the central office to make the connection directly. But they provide no evidence to support that claim, and it does not necessarily follow in any event. In Bell Atlantic's case, for example, we will provide several options in order to allow competing carriers to reduce their cost -- including an option to establish a physical collocation arrangement that is substantially smaller than the standard, and to establish a virtual arrangement that allows competitors to perform the combination remotely and avoid the cost of dispatching technicians to individual central offices. In contrast to the cost of paying both their own trained technicians to make a central office visit and the cost of a second trained technician to provide the necessary supervision, the cost to make the connections remotely using a virtual collocation arrangement is likely to be comparatively small.

5. <u>The public interest standard is not a broad license to add requirements that are unrelated to the long distance authority being sought</u>. The long distance incumbents renew their argument that the Commission should convert the "public interest" standard into a broad license to add new local competition standards to the requirements of the Congressionally-specified checklist. This argument cannot be squared with the Act.

The most basic problem with the argument is simple: It is fundamentally inconsistent with the carefully specified and exhaustive competitive checklist adopted by Congress (after extensive legislative negotiations and compromise), § 271(c)(2)(B), and with the express statutory command that the Commission may not add to (or subtract from) the terms of that checklist, § 271(d)(4). These provisions together make it abundantly clear that Congress pointedly decided itself to specify the required local competitive conditions necessary to obtain long distance relief, precisely to avoid the sort of open-ended inquiry that these parties seek to reintroduce. As a result, the argument violates basic principles of statutory construction demanding that a statute be read to give coherence to the whole statute: that one provision cannot be read to negate, contradict, or undermine others;[7] and that specific provisions addressing a particular issue (here, the openness of local markets) should not be displaced by a broad interpretation of other provisions.[8]

Moreover, the argument is incompatible with other critical indicators of Congressional intent. First, the focus of the public interest inquiry cannot properly be placed on the local market. The only inquiry the Commission is authorized to undertake by the Act is whether "the requested authorization" — that is, the ability to provide in-region long distance service — is in the public interest. As a result, the relevant focus of the public interest inquiry is on the market the Bell company seeks authority to enter — namely, long distance — rather than on the local market. In fact, the Conference Report's reference to possible "standard[s]" for the Attorney General's own evaluation

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[7] See, e.g., United Sav. Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988); Grade v. National Solid Wastes Mgt. Ass'n, 505 U.S. 88, 100 (1992).

[8] See, e.g., Custis v. United States, 511 U.S. 485, 485-86 (1994); John Hancock Mut. Life Ins. Co. v. Harris Trust & Savings Bank, 510 U.S. 86, 95-96 (1993); West Virginia Univ. Hosp., Inc. v. Casey, 499 U.S. 83, 92 (1991); Green v. Block Laundry Mach. Co., 490 U.S. 504, 524-26 (1989).

focuses on the market to be entered in each of the specific examples it gives. Conf. Rep. 149. This alone requires the argument to be rejected.

But the argument is in fact even more extreme because it is not tied in any way to the avoidance of a harm that the requested authority would supposedly cause. Instead, these commenters propose to use the "public interest" standard as leverage to obtain something else that the Commission may deem to be a public good — faster development of local competition. Their principal justification for doing so is the claim that a Bell company's "incentive" to open its local market will allegedly be diminished once it receives long distance relief. Even apart from the fact that the Commission has other tools at its disposal to address this concern,[9] this argument simply proves too much for it would allow any requested approval under a "public interest" standard to be withheld solely to extract some unrelated benefit.[10]

Nor, finally, can broad invocations of a statutory "purpose" to promote competition substitute for, or overcome, the careful compromises reflected in the statute itself. "Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents

[9] Among other things, the Act expressly authorizes the Commission to revoke a Bell company's long distance authority at any time if it "has ceased to meet any of the conditions required for" long distance entry, § 271(d)(6). And, of course, the various enforcement mechanisms available to the Commission are backed up by the federal and state antitrust laws, § 601(b)(1), including the availability of treble damages.

[10] Cf. In the Matter of Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, ¶10 (1990) (changing policy of permitting license applicants to pay money to commenters in exchange for dropping objections because this policy permits commenters "to reap benefits that are unrelated to the operation of the station in the public interest").

the effectuation of congressional intent." Board of Governors of Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361, 374 (1986); see Rodriguez v. United States, 480 U.S. 522, 525-26 (1987). Congress specified the checklist as the limit of inquiry into the openness of local markets. A demand for additional requirements on that subject defeats, rather than respects, Congressional intent. In short, the reading of section 271 outlined above is the only one that gives every part meaning that fits sensibly with all other parts, as required by basic cannons of statutory construction. See, e.g., Dep't of Revenue of Oregon v. ACF Industries, 510 U.S. 332, 340-341 (1994). By contrast, the Department's reading would violate the fundamental obligation of courts (and agencies) to make "sense rather than nonsense" out of the entire relevant law (West Virginia Univ. Hosp., 499 U.S. at 83, 101).

Respectfully submitted.

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